

**SUSMAN GODFREY L.L.P.**

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
32ND FLOOR  
1301 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6023  
(212) 336-8330  
FAX (212) 336-8340  
WWW.SUSMANGODFREY.COM

SUITE 5100  
1000 LOUISIANA STREET  
HOUSTON, TEXAS 77002-5096  
(713) 651-9366

SUITE 1400  
1900 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067-6029  
(310) 789-3100

SUITE 3800  
1201 THIRD AVENUE  
SEATTLE, WASHINGTON 98101-3000  
(206) 516-3880

ELISHA BARRON  
DIRECT DIAL (212) 729-2013

E-MAIL EBARRON@SUSMANGODFREY.COM

June 30, 2020

Via ECF

The Honorable Sarah Netburn  
United States Magistrate Judge  
Thurgood Marshall Courthouse  
40 Foley Square, Room 430  
New York, NY 10007

Re: *Rich v. Fox News Network LLC et al.*, No. 18-cv-2223

Dear Judge Netburn:

Plaintiffs Joel and Mary Rich and defendants Fox News Network, LLC, Malia Zimmerman (“Fox Defendants”), and Ed Butowsky jointly submit this letter to update the Court on the status of discovery in the above-captioned case.

Pending Motions

1. The Fox Defendants filed a motion to dismiss the negligent supervision, vicarious liability, aiding and abetting, and conspiracy claims. That motion is fully briefed and awaiting decision.

2. Defendant Butowsky’s motion to dismiss for lack of personal jurisdiction is fully briefed and awaiting decision.

3. On June 12, 2020, Plaintiffs filed a pre-motion letter seeking to compel production of certain of Fox News’s documents relating to defendant Butowsky and third-party Rod Wheeler (Dkt. 149). Fox News filed a response on June 17, 2020 (Dkt. 150), and Plaintiffs filed a reply on June 23, 2020 (Dkt. 152).<sup>1</sup>

---

<sup>1</sup> Plaintiffs filed the Reply letter under seal (with a redacted version filed publicly at 152) because Exhibit H to that letter is a document Mr. Butowsky produced and designated Confidential. Plaintiffs sought Mr. Butowsky’s permission to file the document publicly, but Mr. Butowsky did not agree.

June 30, 2020

Page 2

Status of Representation of and Discovery from Defendant Butowsky

On June 26, 2020, attorney Eden Quanton entered an appearance on behalf of defendant Butowsky. Plaintiffs re-served Mr. Butowsky with their requests for production after the Second Circuit reinstated the case, in October 2019. Plaintiffs and Mr. Butowsky have agreed that, unless the pending motion to dismiss for lack of jurisdiction has been granted, Mr. Butowsky will respond by July 30, 2020 to the document requests, and that Mr. Butowsky will commence a meaningful production of documents to be produced on a rolling basis at that time.<sup>2</sup>

Status of Other Party Discovery

Plaintiffs have produced 3,613 documents to date. Fox News has produced 12,939 documents. Malia Zimmerman has produced 623 documents and, on June 28, 2020, produced redacted call logs. Mr. Butowsky produced 1,860 documents in response to Fox News's document requests. The parties are continuing to make rolling productions.

Status of Party Discovery Disputes

As set forth above, Plaintiffs and Fox News have submitted pre-motion letters to the Court regarding their dispute over documents related to defendant Butowsky or Rod Wheeler. Plaintiffs and the Fox Defendants are negotiating certain other discovery issues, but there are no other ripe discovery disputes at this time.

Status of Third-Party Discovery

Plaintiffs have served third-party subpoenas on Aaron Rich, Fox Television Stations, LLC, and former Fox News employee Adam Housley. Plaintiffs have produced documents and deposition transcripts and exhibits received pursuant to these subpoenas to the Fox Defendants. Plaintiffs intend to seek further discovery from Fox Television Stations and Adam Housley, pursuant to these subpoenas and, if necessary, move to compel. Plaintiffs also served subpoenas on Matt Couch, Verizon, AT&T, and Zoom and have not yet received responsive documents. On June 30, 2020, Plaintiffs served notice of their intention to serve subpoenas on third parties Greg Wilson, Sean Hannity, Tom McInerney, John Moody, and Ken LaCorte.

Fox News has served subpoenas on third parties Rod Wheeler, Aaron Rich, Brad Bauman, and Cassandra Fairbanks and is attempting to serve subpoenas on WikiLeaks and Julian Assange. Fox News has produced documents received from Mr. Wheeler. It has not received productions from any other third party to date.

---

<sup>2</sup> Mr. Quanton was not able to confirm the specific wording above with his client but undertakes in good faith to advance discovery as indicated.

June 30, 2020

Page 3

Mr. Butowsky intends to issue third-party subpoenas to various parties, including the Federal Bureau of Investigation, the Democratic National Committee, Wikileaks, Donna Brazile, the National Security Administration, Crowdstrike, AT&T, Google, Cathy Lanier, Sy Hersh, Ellen Ratner, Rod Wheeler and Aaron Rich. If necessary, Mr. Butowsky also intends to seek Court assistance in securing depositions of witnesses located abroad, including Julian Assange.

Third-Party Discovery Requests to Defendant Malia Zimmerman

Aaron Rich served a deposition subpoena on Malia Zimmerman in his separate case against Mr. Butowsky pending in the U.S. District Court for the District of Columbia, No. 18-cv-681. Ms. Zimmerman and Fox News moved for a protective order to bar the deposition, arguing that the New York and federal newsgathering privileges shielded her testimony from discovery. After initially denying the motion, Judge Leon granted a hearing on Fox News's and Ms. Zimmerman's motion for reconsideration. A decision on that motion remains pending.

Discovery Schedule and Next Status Update

The parties are discussing scheduling issues, and the conduct of depositions in light of the ongoing pandemic. The parties will provide by July 22, 2020, a joint proposal or, if the parties cannot reach agreement, separate proposals for moving forward with discovery in this case.

Respectfully,



Elisha Barron  
*Counsel for Joel & Mary Rich*

*With consent,*

Joseph Terry  
*Counsel for Defendant Fox News Network, LLC*

David Stern  
*Counsel for Defendant Malia Zimmerman*

Eden Quainton  
*Counsel for Defendant Ed Butowsky*